

_____, et al. _____)
 _____)
 Petitioners, _____)
 _____)
 vs _____)
 _____)
 NORTHWEST R-I SCHOOL DISTRICT, _____)
 _____)
 Respondent. _____)

ISSUES AND PURPOSE OF THE HEARING

1. Whether Respondent failed to provide Student with a Free Appropriate Public Education because it had a basis of knowledge prior to December 16, 2003, to suspect that Student was a child in need of special education and/or related services, and it failed to identify Student accordingly.

2. Whether Respondent failed to provide Student with a Free Appropriate Public Education in that Respondent failed to properly screen and consider existing and current data after Petitioners requested an initial evaluation for special education services on January 6, 2004.

TIME LINE INFORMATION

The initial request for a hearing was received by the Department of Education on March 24, 2004. Prior to the expiration of the 45-day time line, on or about April 29, 2004 Respondent filed a motion for an extension to June 30, 2004 which was granted on May 4, 2004. On or about June 25, 2004 the parties filed a joint motion for a further extension to July 19 for hearing and a date for decision as of August 12, 2004. Said motion was granted on June 26. At the hearing on July 20, 2004 the parties agreed to extend the date for the Panel's decision to August 17, 2004 which was further extended to September 17, 2004 by motion filed on August 16, 2004.

JURISDICTION AND ISSUES

The Individuals With Disabilities Education Act ("IDEA") codified at 20 U.S.C. §1400, *et seq.* entitles the parents of a child with a disability to "an impartial Due Process Hearing" upon request, with respect to "any matter relating to the identification, evaluation or education placement of the child, or the provision of a Free Appropriate Public Education of such child." 20 U.S.C. §1415(b)(1)(E)(2). In Missouri, the hearing authorized by Section 162.961 RSMo., and conducted in this cause on July 19-20, 2004, is intended to be the impartial Due Process Hearing mandated by the IDEA.

In Petitioners' Complaint and Request for Hearing, dated March 23, 2004, Petitioners raised a number of allegations dealing primarily with the District's failure to identify Student as a child in need of special education prior to December 16, 2003. In addition, Petitioners have alleged that by failing to consider medical diagnoses of Bi-Polar, Oppositional Defiance Disorder and Depression, the District denied Student a Free Appropriate Public Education.

Reduced to its essence, Petitioners' Complaint raises two issues for determination:

1. Whether Respondent failed to provide Student with a Free Appropriate Public Education because it had a basis of knowledge prior to December 16, 2003, to suspect that Student was a child in need of special education and/or related services, and it failed to identify Student accordingly.

2. Whether Respondent failed to provide Student with a Free Appropriate Public Education in that Respondent failed to properly screen and consider existing and current data after Petitioners requested an initial evaluation for special education services on January 6, 2004.

Therefore, the Panel, in consideration of these issues, and after hearing and giving appropriate weight to the evidence in this matter, makes the following Findings of Fact and Conclusions of Law and issues the following Decision and Order.

FINDINGS OF FACT

The Hearing Panel makes the following findings of fact:

1. Petitioner, Student (DOB:) is a year-old student who has been continuously enrolled as a regular education student in the Northwest R-I School District (hereinafter "District") since 1998.

2. Student was diagnosed with Attention Deficit Hyperactivity Disorder ("ADHD") in first or second grade. (Tr. Vol. I, pg. 48; Exhibit HH).

3. The impact of ADHD on Student's education programming has been addressed through accommodation plans pursuant to Section 504 of Rehabilitation Act of 1973, 29 U.S.C.

§700, *et. seq.* (“Rehab Act”). Parent, Student’s mother, testified that until the middle of November 2003 Student was a “pretty typical” student, and was achieving mostly B’s and C’s in her classes. (Tr. Vol. I, pg 52, 80-81; 106).

4. At all pertinent times up to and including the hearing of this cause, Student has never been determined to be a child in need of special education or related services. (Tr. Vol. I, pg. 100-104).

5. In August 2003, Student entered Northwest High School as an age appropriate 11th grade student in the regular education curriculum.

6. On December 16, 2003, Student was found in possession of marijuana while on campus at Northwest R-I High School. (Tr. Vol. I, pg. 60).

7. Possession of marijuana is a violation of District policy. That policy is contained in the student handbook. (Tr. Vol. I, pg. 85).

8. Parent, Student’s mother, acknowledged receipt of the student handbook, and knowledge of the District’s drug policy. (Tr. Vol. I, pg. 85).

9. On December 16, 2003, Student was suspended from school for ten days with a recommendation of an additional 170-day suspension as a result of her possession of marijuana. (Tr. Vol. I, pg 60).

10. At the time of the December 16, 2003 suspension, Student had a diagnosis of ADHD and was being served by an accommodation plan pursuant to the Rehab Act. (Tr. Vol. I, pg. 63-64).

11. Mother testified that Student was seen by a Dr. Edwards on or about December 9, 2003. Mother produced a billing tracking statement from Psychiatric Center, Ltd. dated December 9, 2003 in support of this contention. The billing tracking statement includes one line which contains the words “Depressive D/O, Major, Single; Oppositional Defiant Disorder.” Mother testified that she provided a copy of this document to assistant principal Jennifer Baugh following Student’s December 9, 2003 exam by Dr. Edwards to explain Student’s absence from

school. This billing statement is the only documentation provided by the Parents to the District evidencing these diagnoses prior to December 16, 2003, and it was given to the District to explain Student's absence. Moreover, it was provided to the District sometime after December 9, 2003. (Tr. Vol. I, pg. 57-58, 82-84, 99).

12. Parents, appealed 's suspension and a discipline hearing was held on the Parents' appeal on January 6, 2004. (Tr. Vol. I, pg. 62).

13. On January 8, 2004 Dr. Paul Bauer, Ed., the hearing officer who presided at the disciplinary hearing, determined that Student had possessed illegal drugs on December 16, 2003 in violation of District policy and suspended her for the remainder of the 2003-2004 school year. (Tr. Vol. I, pg. 62-63; Ex. P-26).

14. On January 6, 2004 at the disciplinary hearing the Parents also requested that Student be considered for an initial evaluation to determine her eligibility for special education. (Tr. Vol. I, pg. 63, 104-105).

15. In support of their request for an initial evaluation the Parents wrote to Jennifer Baugh, Assistant Principal, on January 9, 2004. That letter referenced enclosures from Psych Care Consultants and Rockwood Counseling, but the Parents offered in evidence only their cover letter. The referenced enclosures are not part of the record. (Ex. P-22 pg. 19). However, Ex. P-2 and P-3 are different letters from Psych Care Consultants and Rockwood Counseling which were received by the District in connection with the Parents' request for an initial evaluation.

16. The Parents never furnished a formal diagnosis from any medical doctor in support of Student's Bi-Polar, Depression or ODD diagnoses. (Tr. Vol. I, pg. 99-100, 136-137).

17. Mother admitted that before December 9, 2003 the District had no reason to suspect and had no knowledge that Student had been diagnosed with ODD. (Tr. Vol. I, pg. 99-100).

18. Mother admitted that before December 16, 2003 she had not advised the District that Student had been diagnosed with Bi-Polar Disorder. (Tr. Vol. I, pg. 99-101).

19. Mother admitted that she did not suspect that Student had ODD before December 9, 2003. (Tr. Vol. I, pg. 100).

20. Similarly, Mother admitted that the Parents did not suspect that Student was Bi-Polar before December 16, 2003. (Tr. Vol. I, pg. 100-101).

21. On cross examination Mother acknowledged the Parents did not begin to suspect that Student might be in need of special education services until December 5, 2003. (Tr. Vol. I, pg. 101-104).

22. Susan Welde, the District's Special Education Process Coordinator, testified for the Respondent. Ms. Welde holds a Bachelor of Science Degree in Psychology from Saint Louis University and a Post Graduate Degree as an Educational Specialist in School Psychology from the University of Northern Colorado. Ms. Welde has worked for the Wentzville School District as a school psychologist. In that capacity, Ms. Welde testified that she performed approximately 70 special education evaluations and assessments per year for the four years that she worked for the Wentzville School District. During that same period, she consulted on approximately ten IEP's per month. (Tr. Vol. II, pg. 24-25). In addition, Ms. Welde testified that while at the Wentzville School District she was involved in no less than 150 manifestation determination hearings where her responsibilities included evaluation data and interpreting whether or not a student's behavior was related to a disability. (Tr. Vol. II, pg. 27).

23. Ms. Welde testified that she was hired by Northwest R-I School District as a Special Education Process Coordinator for evaluations in July 2000. In that capacity, she supervised the District's diagnostic staff in the evaluation of students referred for special education evaluations. (Tr. Vol. II, pg. 28).

24. Ms. Welde testified that following the Parents' request for an initial evaluation (January 6, 2004) the District convened a screening/referral team (hereinafter "Referral Team") that included herself, Student's Spanish and English teachers, the high school diagnostician, the high school counselor, Student and Parents. (Tr. Vol. II, pg. 31). Ms. Welde went on to testify

that once the Parents' request for an initial evaluation was received, the District sent out screening packets to Student's teachers and a social/developmental history questionnaire to the Parents. (Tr. Vol. II, pg. 33; Ex. BB-FF, HH).

25. Ms. Welde testified that the Referral Team reviewed existing and current information on Student including standardized test results, academic performance, disciplinary history, attendance records, classroom-based assessments, and medical and other information furnished by the Parents. (Tr. Vol. II, pg. 45-48; Ex. BB; CC; DD; EE; FF; NN).

26. Susan Welde noted that the classroom observation and screening data indicated that Student's teachers had no concerns about Student's ability to understand academic concepts. Similarly, there were no indications that Student required extraordinary means to help her learn new concepts. In fact, Student did not even need or utilize the few interventions that were offered to her. (Tr. Vol. II, pg. 52-53).

27. Susan Welde also testified that Student's teachers reported that Student had a positive attitude in the classroom, socialized well and had no difficulties understanding her work. (Tr. Vol. II, pg. 76-77).

28. On cross-examination by the Petitioner's counsel, Mrs. Welde testified that Student's drop in grades following her December 16, 2003 suspension did not have any connection to the outside diagnoses of ODD or Bi-Polar, and that these diagnoses were not impacting Student's ability to achieve in the classroom. (Tr. Vol. II, pg. 76-77).

29. As noted, Susan Welde testified that Student's ODD and Bi-Polar diagnoses were not impacting her ability to achieve academically. Ms. Welde testified that the mere existence of these diagnoses for a brief period of time preceding Student's suspension were not determinative of a disability. (Tr. Vol. II, pg. 77-78, 97). Ms. Welde testified that any symptoms related to ODD or Bi-Polar that may qualify a student for an educational diagnosis of Emotionally Disturbed must be present for an extended period of time and cause the student pervasive difficulties either

academically or socially. Ms. Welde testified that there was no evidence Student was having difficulty in either of these areas prior to her suspension. (Tr. Vol. II, pg. 89-90).

30. On February 2, 2004, after conducting its initial screening and considering Student's existing and current data, the Referral Team determined that insufficient evidence existed to support a disability, and that further evaluation was not warranted. (Tr. Vol. II, pg. 50-53; Ex. OO).

31. On February 2, 2004 the Parents were present when the Referral Team made its determination. (Tr. Vol. II, pg. 53). The Parents also received a written Notice of Action regarding the Referral Team's determination that there was insufficient evidence to suspect that Student's had a disability, and that further special education evaluation was not warranted. (Tr. Vol. II, pg. 54-55; Ex. OO, RR).

32. On February 6, 2004 the Parents requested a Resolution Conference appealing the Referral Team's determination not to evaluate Student further.

33. A Resolution Conference appealing the Referral Team determination was conducted. The record is not clear, but it appears that conference resolved the issues in favor of the District. Mother acknowledged that despite that finding, it was recommended that the District submit the data and information considered by the Referral Team to a third party to evaluate and submit findings and recommendations. Thereafter the Referral Team was to reconsider its determination and, if appropriate, evaluate Student further. (Tr. Vol. I, Pg. 94-95).

34. Despite the Recommendation of the Resolution Conference, the Parents filed a Complaint and Request for Due Process Hearing on March 24, 2004.

35. In response to the Recommendation of the Resolution Conference, Paul Bauer, Ed. D., Director of Special Services for the District, wrote to the Parents twice requesting that the Parents sign a Release of Information so that the District could send Student's records for review by a third party consistent with the Resolution Conference Recommendation. (Tr. Vol. I, pg. 95-97).

36. Mother admitted that the Parents never responded to Dr. Bauer's letters, and never authorized the District to release Student's records for third party review. (Tr. Vol. I, pg. 96-98).

37. The Parents filed a Child Complaint with the Missouri Department of Elementary and Secondary Education (hereinafter "DESE") in which they raised allegations identical to those raised in the instant Complaint and Request for Hearing and currently before this Panel. (Tr. Vol. I, pg. 115-116).

38. DESE found that the District had complied with all requisite regulations in determining whether to evaluate Student further for special education services. (Tr. Vol. I, pg. 116).

39. Mother acknowledged her familiarity with Missouri's A+ Program. She testified that the A+ Program provides up to two year's college tuition for eligible students, and that a student loses eligibility for the Program following a disciplinary suspension from school. (Tr. Vol. I, pg. 117-118).

CONCLUSIONS OF LAW

The IDEA guarantees all public school children with disabilities a free appropriate public education ("FAPE") designed to meet their unique needs. 20 U.S.C. §1412(a)(1). A Local Educational Agency ("LEA") fulfills the requirement of providing a free appropriate public education "by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction." *Board of Educ. v. Rowley*, 458 U.S. 176, 203 (1982); *Fort Zumwalt v. Clynes*, 119 F.3d 607, 612 (8th Cir. 1997). An educational program designed to meet the unique needs of a child with a disability is provided by means of an IEP. 20 U.S.C. §§1401(8), (11).

Although an educational benefit must be more than de minimis to be appropriate, *Doe v. Bd. Of Educ. Of Tullahoma City Schls.*, 9 F.3d 455, 459 (6th Cir. 1993), *cert. denied*, 128 L.Ed.2d 665 (1994), an appropriate educational program is one that is "reasonably calculated to enable the

child to receive educational benefits.” *Rowley*, 458 U.S. at 207. *See also Clynes*, 119 F.3d at 611. In articulating the standard for FAPE, the *Rowley* Court concluded that “Congress did not impose any greater substantive educational standard than would be necessary to make such access meaningful.” 458 U.S. at 192. The Court found Congress’s intent was “more to open the door of public education to handicapped children on appropriate terms than to guarantee any particular level of education once inside.” *Id.* *See also Clynes*, 119 F.3d at 612.

In order to achieve these purposes, the IDEA requires that a State have in effect policies and procedures to ensure that “[a]ll children with disabilities residing in the State . . . are identified, located and evaluated.” 20 U.S.C. §1412(a)(3); 34 C.F.R. §300.125. The process of identifying, locating and evaluating children with disabilities is generally referred to as “child find.” *See* 20 U.S.C. §1412 (a)(3). In Missouri, the Department of Elementary and Secondary Education is responsible for the “statewide coordination of the planning and implementation of the child identification, location, and evaluation efforts.” *See* Missouri Plan for Part B (“State Plan”) at 12. In Missouri, local school districts are given the primary responsibility for carrying out child find activities. *Id.* at 12-17.

The IDEA and State Plan contain extensive provisions describing how the screening and evaluation process should be carried out. *See* 34 C.F.R. §300.530-543; State Plan at 61-65. Significantly, even where initial screening indicates the possibility of the need for special education, a full evaluation is not mandated. Rather, school districts are to review existing and current information to identify what additional data, if any, are needed to determine whether the child needs special education and related services. 34 C.F.R. 533(a)(2)(iii). Finally, in a situation like the instant cause where there is a post-disciplinary action request for an initial evaluation, the 1997 Amendments to the IDEA control.

The 1997 Amendments to the IDEA incorporated a number of specific provisions dealing with discipline of disabled students, including provisions extending IDEA protections to students not previously determined to be disabled or receiving special education services. However, this

extension of IDEA protections to previously non-identified students is only applicable if the school district can be shown to have had a basis of knowledge that the student should have been identified prior to the incident for which the discipline was imposed. 20 U.S.C. §1415(k)(8)(A). These provisions, together with their implementing regulations at 34 C.F.R. §300.527, were added to address the abuse of IDEA protection by non-disabled students seeking to avoid legitimate disciplinary measures through eleventh-hour requests for special education assessments. *Cabot School District* 34 IDELR ¶78 (SEA AK 2000).

As discussed below, the panel finds that the Parents have produced no evidence to establish a basis of knowledge on the part of the District prior to December 16, 2003 that Student was in need of special education. The Panel also finds that the Parents have failed to prove the District's post-discipline screening and review of data on Student was deficient.

A. Basis of Knowledge Prior to December 16, 2003

In order for the Parents to succeed, they must establish that, prior to December 16, 2003 the District had a basis of knowledge to suspect that Student might be in need of special education services. To do so, the IDEA requires that the Parents prove that at least one of four circumstances existed prior to Student's apprehension and discipline for possession of marijuana. 20 U.S.C. §1415(k)(8)(B). Specifically, in order for the Parents to prevail, they must prove at least one of the following conditions existed before December 16, 2003:

1. They had expressed their concerns in writing that Student was in need of special education services. 34 C.F.R. §300.527 (b)(1), or
2. Student's behavior or performance demonstrated the need for special education services. 34 C.F.R. §300.527 (b)(2), or
3. Prior to December 16, 2003 the Parents requested an evaluation pursuant to 34 C.F.R. §300.530-536, 34 C.F.R. §300.527 (b)(3), or
4. A teacher or other District personnel expressed concerns about Student's behavior or performance to the District's Director of Special Education or other District

personnel in accordance with the District's child find or special education referral system. 34 C.F.R. §527 (b)(4).

The evidence adduced by the Parents falls short of satisfying any of the foregoing conditions. To begin with, Mother acknowledged that neither she nor her husband expressed any concerns regarding Student's need for special education in writing to the District. (Tr. Vol. I, pg. 99-107). Similarly, the Parents admitted that they never requested that the District evaluate Student for special education services until January 6, 2004, some three weeks after her suspension (Tr. Vol. I, pg. 104). Likewise, the Parents offered no evidence that any teacher or District personnel expressed any concerns about Student's need for special education to the Special Education Director, or one another. Indeed, the Parents admitted that in conversations with Jennifer Baugh, Assistant Principal, and Grace Self, school counselor, neither Ms. Baugh nor Ms. Self ever expressed any concerns that Student needed special education or related services. (Tr. Vol. I, pg. 104-105). Finally, Student was an average to above average student right up to the date of her suspension for drug possession (Tr. Vol. I, pg. 52, 87-92; Ex. NN).

Significantly, the Parents cannot rely on statements or expressions by District personnel, Student's prior disciplinary history or her existing accommodation plan to meet their burden. United States Department of Education ("DOE") guidelines clearly state that school districts should not be held to have a basis of knowledge based merely upon staff expressions of concern about a student's behavior or performance unrelated to whether the child had a disability. OSEP Memorandum: Attachment 1 Analysis of Comments & Changes to 34 C.F.R. §300.527, at 12629 (May 4, 2000). Likewise, multiple disciplinary referrals in and of themselves are not enough to constitute a basis of knowledge under §1415 (k)(8) or §300.527. See *Dickinson Indep. Sch. Dist.*, 29 IDELR 290 (SEA TX 1998).

Similarly, Student's status as a Section 504 student cannot establish a basis of knowledge on the part of the District. The DOE has stated that a school district will not be considered to have a basis of knowledge under 20 U.S.C. §1415 (k)(8) and 34 C.F.R. §300.527 merely because a

student receives services under another program (like the Rehab Act). OSEP Memorandum, May 4, 2000, at 12629.

Ultimately, the Parents have effectively conceded on this issue. In his closing argument, the Parents' counsel acknowledged the paucity of evidence on the record to establish that a basis of knowledge existed prior to December 16, 2003 to suspect that Student was a child in need of special education. (Tr. Vol. II, pg. 108, 110-112).

Accordingly, the Panel concludes that the Parents failed to establish that the District had a basis of knowledge prior to December 16, 2003 that Student was a child with a disability in need of special education services.

B. Post-Discipline Initial Screening and Review

Failing to establish a basis of knowledge on the District's part prior to December 16, 2003 the Parents must prove that the District failed to follow applicable procedures or conduct an appropriate initial screening and review of information and data once they requested an initial evaluation. The Parents first requested an initial evaluation for special education services on January 6, 2004, three weeks after Student was found in possession of marijuana. (Tr. Vol. I, pg. 104). The District responded by immediately initiating the screening and review process required under the IDEA and the State Plan. (Tr. Vol. II, pg. 30-31). As part of any evaluation under the IDEA, the Act requires that a team of qualified individuals first determine the need for, and the nature of data and information necessary to determine the need for special education services. 34 C.F.R. §300.533 (a). To do so, the District convened a screening/referral team (referral team) that included Father and Mother, Student's English and Spanish teachers, the District's special education process coordinator, special education diagnostician and Student's school counselor. Thus constituted, the referral team was comprised of qualified individuals compliant with IDEA requirements. 34 C.F.R. §300.344.

Susan Welde, the District's Special Education Process Coordinator, testified that the referral team secured screening information and observation data from Student's teachers,

reviewed Student's grades, performance and other classroom-based assessments, attendance, and disciplinary history. The team also received and considered medical and other information supplied by Parents. (Tr. Vol. II, pg. 44-48); Ex. BB, CC, DD, EE, FF, HH, NN). Mother's testimony is consistent with and confirms Ms. Welde on this point. (Tr. Vol. I, pg. 108-109). This is precisely the data and information the IDEA and its implementing regulations require the team to consider. 34 C.F.R. §300.533 (a)(1)(i-iii).

Based on its review of the foregoing information, the referral team concluded that no additional data or information was necessary to make its determination whether Student needed special education and related services. The team determined that Student was not a child in need of special education. (Tr. Vol. II, pg. 50; Ex. OO). The evaluation team's actions in reaching its conclusion fully complied with 34 C.F.R. §300.533 (a)(2)(iii). (Tr. Vol. II, pg. 50-54; Ex. OO, RR). Parents, as part of the screening/referral team, were present when the team determined that further evaluation was not necessary. (Tr. Vol. II, pg. 53). In addition, the District notified the Parents in writing of this determination and the reason for it. (Tr. Vol. II, pg. 54; Ex. OO, RR). In doing so, the District again met its responsibilities under the IDEA and its implementing regulation. 34 C.F.R. §300.533 (a)(2)(d).

The District complied with all statutory and regulatory requirements in conducting its initial screening and review of existing and current information on Student. In doing so, the District complied fully with the IDEA, the State Plan and all applicable implementing regulations.

Student was determined not to be in need of special education services and that determination was arrived at after careful, complete, and considered review of appropriate data by qualified professionals. Parents' request for evaluation received the appropriate level of review and consideration. As such, the Parents' claim on this issue must also fail.

CONCLUSION

The IDEA mandates that the District have a basis of knowledge that a previously unidentified student may be in need of special education or related services. Here, because none of the circumstances necessary to establish a basis of knowledge on the part of the District were present, no such basis of knowledge existed.

Similarly, the IDEA leaves to the school district the discretion to determine whether a student is in need of special education services. All that is necessary is for a district to review existing and current data and information in determining if additional evaluative data is required. The District did precisely that in this case and determined no additional information or further evaluation was necessary.

Because the Petitioners failed to establish that the District had a basis of knowledge before December 16, 2003 to suspect Student was a student who might be in need of special education and related services, or demonstrate that the District's initial evaluation of Student was deficient at the time it was conducted, the Panel finds for the District on all issues.

DECISION

1. It is the decision of the Panel that the Respondent did not have a basis of knowledge prior to December 16, 2003 to suspect that Student was a student in need of special education or related services.

2. The Panel further decides that the Respondent complied with the IDEA and its implementing regulations, and the Missouri State Plan for Part B of the IDEA in conducting its initial screening and review of information in response to Petitioners' request for an initial evaluation.

3. The Panel further decides that the Referral Team's determination that there was not sufficient evidence to suspect a disability was appropriate.

APPEAL PROCEDURE

PLEASE TAKE NOTICE THAT THE FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION CONSTITUTE THE FINAL DECISION OF THE DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION IN THIS MATTER.

PLEASE TAKE FURTHER NOTICE that you have a right to request review of this decision pursuant to the Missouri Administrative Procedure Act, Section 536.010 *et seq.* RSMo., and Section 162.962 RSMo. Proceedings for review may be instituted by filing a petition in the Circuit Court of the county of proper venue within 45 days after the receipt of the notice of the Hearing Panel's decision. The venue of such cases shall, at the option of the plaintiff, be in the Circuit Court of Cole County or in the county of the plaintiff or one of the plaintiff's residences.

PLEASE TAKE FURTHER NOTICE that, alternatively, your appeal may be taken to the United States District Court for the Eastern District of Missouri in lieu of appeal to the State courts. 20 U.S.C. §1415.

SO ORDERED this 20th day of August 2004.

George J. Bude, Chairperson

Dayna Deck, Panel Member

Richard Staley, Ph.D. Panel Member

Copies of the foregoing mailed to:
Mr. Ernest G. Trakas
Parents
Mr. Craig Smith

I concur with the Panel on all findings. I write separately to add:

The evidence in this case showed that the Student was diagnosed with Depression, Bipolar Disorder, and Oppositional Defiant Disorder. These are serious mental illnesses that might require the School District, under the proper circumstances, to develop an Individual Education Plan for a student. At the time the School District made its evaluation in February 2004 it had limited information from the Student's treating doctors about her diagnoses and no indication that her recent diagnoses were causing her any educational impairment, especially since she had not been in school since December 2003. I was persuaded by the comments of Ms. Welde that the Student despite her recent medical diagnoses had not had any apparent educational difficulties¹ for any extended period of time that would warrant the Evaluation Team recommending an educational diagnosis and an IEP. The Parents presented no evidence that would contradict this conclusion. This does not mean, however, that the Student, when returning to school this fall, may not qualify as a student with a disability who needs an IEP. Presumably, since many more months have passed since she was originally diagnosed and began treatment, there will be more medical and/or psychological evidence about the Student's disability and her possible need for an individual education plan.

Dayna F. Deck
Panel Member

¹ This would be new educational difficulties specifically related to her Bipolar, ODD and/or Depression. The Student had a long history of ADHD and had received accommodations under a 504 Plan.